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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	ATTORNEY DOCKET NO. CONFIRMATION NO.	
10/624,272	07/22/2003	Jean-Pierre Lalonde	21819-121CON	7479	
31292 7590 06/19/2007 CHRISTOPHER & WEISBERG, P.A.			EXAMINER		
200 EAST LAS OLAS BOULEVARD SUITE 2040 FORT LAUDERDALE, FL 33301			GIBSON, ROY DEAN		
			ART UNIT	PAPER NUMBER	
			3739		
			MAIL DATE	DELIVERY MODE	
			06/19/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Annliastic	a Na	Applicant(a)			
Office Action Summary The MAILING DATE of this communication app		Application	•	Applicant(s)			
		10/624,272	•	LALONDE ET AL.			
		Examiner		Art Unit			
		Roy D. Gib		3739			
Period for Reply	инѕ сопшинсацон арр	lears on the	Jover Sneet with the C	orrespondence address			
A SHORTENED STATUTOR WHICHEVER IS LONGER, F - Extensions of time may be available ur after SIX (6) MONTHS from the mailing - If NO period for reply is specified above - Failure to reply within the set or extend Any reply received by the Office later the earned patent term adjustment. See 3	ROM THE MAILING DA der the provisions of 37 CFR 1.13 date of this communication. e, the maximum statutory period we ed period for reply will, by statute, nan three months after the mailing	ATE OF THI 36(a). In no ever will apply and will , cause the applic	S COMMUNICATION It, however, may a reply be time expire SIX (6) MONTHS from liation to become ABANDONEI	I. lely filed the mailing date of this communication. D (35 U.S.C. § 133).			
Status				•			
 Responsive to communication(s) filed on <u>18 January 2007</u>. This action is FINAL. 2b) This action is non-final. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213. 							
Disposition of Claims							
4) Claim(s) <u>17-47</u> is/are p 4a) Of the above claim(5) Claim(s) <u>20-24 and 34-</u> 6) Claim(s) <u>17-19,25 and</u> 7) Claim(s) <u>27-33</u> is/are o 8) Claim(s) <u>are sub</u> Application Papers 9) The specification is objective in the specification of the specification is objective.	is/are withdraway is/are allowed. 26 is/are rejected. bjected to. bject to restriction and/orected to by the Examine	wn from con r election re	quirement.	ov the Examiner.			
 10) ☐ The drawing(s) filed on 22 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. 							
Priority under 35 U.S.C. § 119							
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 							
Attachment(s)	•						
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date S Patent and Trademark Office							

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Formal Matters

In light of the affidavits filed on 1/18/2007, the Kudaravalli et al. (6,471,694) reference presented as a prior art reference in the Office action mailed on 10/20/2006 is withdrawn. However, new Double Patenting issues are presented below.

Also drawing 5-11 are considered informal and new replacement drawing would be required before issue.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 17-19 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 16 of prior U.S. Patent No. 6,635,053. This is a double patenting rejection.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated

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by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 25 and 26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,635,053.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are merely broader in scope.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Roy D. Gibson / Primary Examiner Art Unit 3739

June 12, 2007